

**ASSEMBLY BILL**

**No. 1719**

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**Introduced by Committee on Labor and Employment (Koretz (Chair), Mullin (Vice Chair), Chu, Hancock, Laird, and Negrete McLeod)**

February 27, 2003

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An act to amend Sections 6309 and 6315 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1719, as introduced, Committee on Labor and Employment. Safety in employment.

Under existing law, the Division of Occupational Safety and Health investigates complaints that a workplace is not safe, and it may issue orders necessary to ensure employee safety. It notifies a complainant of any action taken.

This bill would require the division to notify the complainant within 14 calendar days of taking action. It would also require the division to annually compile and release on its Website information as to complaints received and actions taken.

Under existing law, the Bureau of Investigation within the division is responsible for directing accident violations where there is a serious injury to 5 or more employees, death, or a request for prosecution by the division. It also refers appropriate cases to prosecuting authorities.

This bill would require the division to provide helpful information to the bureau. It would also require the bureau to notify the prosecuting authorities within 14 calendar days of a determination that there is legally insufficient evidence of a violation of law.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 6309 of the Labor Code is amended to  
2     read:  
3     6309. If the division learns or has reason to believe that ~~any~~  
4     an employment or place of employment is not safe or is injurious  
5     to the welfare of ~~any~~ an employee, it may, ~~of~~ on its own motion,  
6     or upon complaint, summarily investigate the same with or  
7     without notice or hearings. However, if the division ~~secures~~  
8     receives a complaint from an employee, ~~the~~ an employee's  
9     representative, including, but not limited to, an attorney, health or  
10    safety professional, union representative, or ~~representative of a~~  
11    government agency *representative*, or an employer of an  
12    employee directly involved in an unsafe place of employment, that  
13    his or her employment or place of employment is not safe, it shall,  
14    with or without notice or hearing, summarily investigate the ~~same~~  
15    complaint as soon as possible, but not later than three working days  
16    after receipt of a complaint charging a serious violation, and not  
17    later than 14 calendar days after receipt of a complaint charging a  
18    nonserious violation. The division shall attempt to determine the  
19    period of time in the future that the complainant believes the  
20    unsafe condition may continue to exist, and shall allocate  
21    inspection resources so as to respond first to those situations in  
22    which time is of the essence. For purposes of this section, a  
23    complaint is deemed to allege a serious violation if the division  
24    determines that the complaint charges that there is a substantial  
25    probability that death or serious physical harm could result from  
26    a condition which exists, or from one or more practices, means,  
27    methods, operations, or processes which have been adopted or are  
28    in use in a place of employment. When a complaint charging a  
29    serious violation is received from a state or local prosecutor, or a  
30    local law enforcement agency, the division shall summarily  
31    investigate the employment or place of employment within 24  
32    hours of receipt of the complaint. All other complaints are deemed  
33    to allege nonserious violations. The division may enter and serve  
34    any necessary order relative thereto. The division is not required  
35    to respond to ~~any~~ a complaint within this period where, from the

facts stated in the complaint, it determines that the complaint is intended to willfully harass an employer or is without any reasonable basis.

The division shall keep complete and accurate records of ~~any~~ *all* complaints, whether verbal or written, and shall inform the complainant, whenever his or her identity is known, of any action taken by the division in regard to the subject matter of the complaint, and the reasons for the action, *within 14 calendar days of taking any action*. The records of the division shall include the dates on which any action was taken on the complaint, or the reasons for not taking any action on the complaint. The division shall, pursuant to authorized regulations, conduct an informal review of any refusal by a representative of the division to issue a citation with respect to ~~any~~ *an* alleged violation. The division shall furnish the employee or the representative of employees requesting the review a written statement of the reasons for the division's final disposition of the case.

The name of ~~any~~ *a* person who submits to the division a complaint regarding the ~~unsafeness~~ *unsafe condition* of an employment or place of employment shall be kept confidential by the division, unless that person requests otherwise.

*The division shall annually compile and release on its Website data pertaining to complaints received and citations issued.*

The requirements of this section do not relieve the division of its requirement to inspect and assure that all places of employment are safe and healthful for employees. The division shall maintain the capability to receive and act upon complaints at all times.

SEC. 2. Section 6315 of the Labor Code is amended to read:

6315. (a) There is within the division a Bureau of Investigations. The bureau is responsible for directing accident investigations involving violations of standards, orders, ~~or~~ special orders, or Section 25910 of the Health and Safety Code, in which there is a serious injury to five or more employees, death, or request for prosecution by a division representative. The bureau shall review inspection reports involving a serious violation where there have been serious injuries to one to four employees or a serious exposure, and may investigate those cases in which the bureau finds criminal violations may have occurred. The bureau is responsible for preparing cases for *the purpose of* prosecution, including evidence and findings.

(b) The division shall provide the bureau with all of the following:

(1) All initial accident reports.

(2) The division's inspection report for any inspection involving a serious violation where there is a fatality, and the reports necessary for the bureau's review required pursuant to subdivision (a).

(3) Any other documents in the possession of the division requested by the bureau for its review or investigation of any case *or which the division determines will be helpful to the bureau in its investigation of the case.*

(c) The supervisor of the bureau is the administrative chief of the bureau, and ~~must~~ *shall* be an attorney.

(d) The bureau shall be staffed by as many attorneys and investigators as are necessary to carry out the purposes of this chapter. To the extent possible, the attorneys and investigators shall be experienced in criminal law.

(e) The supervisor of the bureau and bureau representatives designated by the supervisor have a right of access to all places of employment necessary to the investigation, may collect any evidence or samples they deem necessary to an investigation, and have all of the powers enumerated in Section 6314.

(f) The supervisor of the bureau and bureau representatives designated by the supervisor may serve all processes and notices throughout the state.

(g) In any case where the bureau is required to conduct an investigation, and in which there is a serious injury or death, the results of the investigation shall be referred in a timely manner by the bureau to the appropriate prosecuting authority having jurisdiction for appropriate action, unless the bureau determines that there is legally insufficient evidence of a violation of the law. *If the bureau determines that there is legally insufficient evidence of a violation of the law, the bureau shall notify the appropriate prosecuting authority having jurisdiction for appropriate action within 14 calendar days of making the determination. A statement of determination rationale shall accompany the notification.*

(h) The bureau may communicate with the appropriate prosecuting authority at any time the bureau deems appropriate.

(i) Upon the request of a county district attorney, the department may develop a protocol for the referral of cases that

1 may involve criminal conduct to the appropriate prosecuting  
2 authority in lieu of or in cooperation with an investigation by the  
3 bureau. The protocol shall provide for the voluntary acceptance of  
4 referrals after a review of the case by the prosecuting authority. In  
5 cases accepted for investigation by the prosecuting authority, the  
6 protocol ~~must~~ *shall* provide for cooperation between the  
7 prosecuting authority, the division, and the bureau. Where a  
8 referral is declined by the prosecuting authority, the bureau shall  
9 comply with subdivisions (a) ~~through~~ *to* (h), inclusive.

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